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October 3, 2006

VIA EMAIL (usf.program@bpu.state.nj.us) AND FIRST CLASS MAIL

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Re: I/M/O the Establishment of A Universal Service Fund
BPU Docket No. EX00020091

Dear Secretary Izzo:

On behalf of New Jersey's low-income energy consumers, Legal Services of New Jersey, Inc. ("LSNJ") submits the following comments on the BPU Staff Straw Recommendations to the Board dated June 14, 2006, regarding possible changes to the Board's energy Universal Service Fund program. An original and 11 copies are enclosed. Kindly stamp one of the copies as received and return it to me in the enclosed envelope.

LSNJ coordinates New Jersey's Legal Services system, 7 non-profit corporations throughout the state providing free legal services to low-income people in civil legal matters. In 2005, we provided such services to more than 50,000 low-income individuals and to numerous community-based organizations serving low-income people. When appropriate, LSNJ makes available information and perspectives on matters of broad public importance in the lives of people in poverty based on its experience in representing tens of thousands of low-income people each year.

LSNJ is very concerned that two of the Staff's proposed program changes in particular -- the imposition of an unspecified annual cap on funding, and the elimination of the Fresh Start program -- pose a direct and severe threat to the effectiveness of one of New Jersey's most important and most desperately needed programs for low-income households. The proposed annual funding cap would certainly amount to a policy determination that some eligible utility customers who qualify for benefits because their energy costs are unaffordable should be denied assistance solely because a pre-set aggregate limit on annual program benefits has been reached. With respect to a vital necessity like energy service in the Northeast United States, we respectfully suggest that a change with such potentially devastating results is unwarranted, particularly in the absence of any evidence that there is a significant problem that needs to be solved.

In the course of only a few years, the USF program has so effectively and efficiently delivered targeted benefits that it has made vast strides toward *eliminating* a major social problem in New Jersey, and has become a respected national model for energy affordability programs. Placing a trap door in the program through which eligible customers will fall and, as a result, lose vital energy service, would be a substantial step backward.

Similarly, as discussed further below, elimination of the Fresh Start component of the program would substantially weaken the USF program to the point of making it a meaningless for numerous eligible low-income customers. New USF enrollees would remain at risk, because their service would remain subject to termination for non-payment of unaffordable pre-program arrears. Ironically, the absence of Fresh Start would specifically affect those new applicants that the Board's outreach efforts are specifically designed to reach.

Because of the overriding potential impact of these two proposals and the threats they pose to the USF program, because there has not been adequate time to digest and analyze the 160-page APPRISE report fully in light of the 22 areas in which the Staff (by its own count) has made proposals, because of the lack of specificity in the Staff's proposals, and because key information – including but not limited to the completion of a net cost analysis – remains unavailable in the record, LSNJ has not attempted to address the full range of topics implicated by the Staff Straw Recommendations, but rather has focused its comments here on the two most crucial issues, and reserves the right to supplement these comments as and when appropriate.

I. THE BOARD SHOULD NOT ABANDON ITS COMMITMENT TO A FULLY FUNDED UNIVERSAL SERVICE PROGRAM

When the Board established the permanent USF program in 2003, the Board clearly stated that the USF program "**should ensure that low-income customers have access to affordable energy**." BPU Universal Service Fund Order dated March 20, 2003, at 3. This statement of purpose resoundingly signaled an end to the days when unaffordable energy costs resulted in great harm and hardship to New Jersey's low-income utility customers across the state, as described in the record of this proceeding.

The most troubling recommendations in the Staff's proposal are those urging the Board to renege on its commitment to providing access to affordable energy services for New Jersey's low-income utility customers. The fully-funded USF program has been an unqualified success in providing assistance to the most vulnerable energy customers in New Jersey. According to LSNJ's preliminary analysis of data provided in the APPRISE Report, almost half of households participating in the USF program have incomes below the federal poverty guidelines, and more than 90% have incomes that fall below the standard of need for New Jersey families. Imposing a preordained cap on benefits would ensure that eligible applicants from among the ranks of these very vulnerable households will be at risk of being turned away. At the same time, it will almost certainly ensure that the number of low-income customers served by the USF program cannot increase (a result inexplicably inconsistent with the lengthy section of the Staff's straw proposal devoted to extensive and costly communications and outreach efforts).

At the same time, annual USF program benefits have remained in the range of reasonable estimates predicted prior to the first year of the program. In 2002, before the Board approved the permanent USF program, the record contained reasonable estimates of the total annual benefits that would be provided in the first year of a fixed credit percentage-of-income program showed a range of between approximately $60 - 67 million on the lower end, and $120 -130 million on the higher end. *See, e.g.*, LSNJ Comment Letter, BPU Docket No. EX00020091, dated December 18, 2002, at 2 ("realistic estimates predict first-year costs of approximately $60 to $130 million"); New Jersey Citizen Action Response to USF Straw Proposal, BPU Docket No. EX00020091, dated December 18, 2002, at 2 ("Mr. Colton's numbers, and those submitted in previous filings by NJCA and Legal Services of New Jersey (1999), show that a fully funded program with eligibility levels at 175% of poverty would cost approximately $120 million.").[1] Actual annual program benefits were approximately $74 million for the 2004-05 program year (APPRISE Report at 157), and are estimated to be approximately $107 million (annualized) over the 15-month 2005-06 program "year" running from June 2005 through and including September 2006 (PSE&G Rate Filing, BPU Docket No. EX00020091, dated June 30, 2006). PSE&G's recent USF rate filing estimates that USF fixed credit benefits for the 2006-07 program year will be $113.0 million. There are, quite simply, no surprises here, nor any reason for concern about rapid increases in total benefit amounts.

Without knowing in detail exactly what the Staff is proposing (*e.g.*, what budget cap amounts would be placed on benefits, what restrictions there would be on the enrollment of eligible customers, and what would happen if pre-budgeted funds run out while additional eligible applicants wish to apply for USF assistance), it is impossible to speculate as to all the types of problems that may arise. The most obvious consequence, however, is that eligible low-income customers will be turned away in any year in which the "fixed cap" is set too low, whether by design or because predictions about the future simply turned out to be off the mark.

No eligible applicants should be denied USF assistance, especially since annual USF benefit amounts have reached a relatively steady state at a level anticipated before the USF program began, and since there is no reason to fear precipitous unexpected increases. With the program penetration rate at approximately 50%, which is typical for low-income energy assistance programs of all types, only small incremental enrollment increases

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[1] These estimates reflected only expected fixed credit amounts, and did not include any amounts

are likely or even possible in the absence of sweeping changes such as automatic enrollment of eligible Medicaid or EITC recipients.

A common sense approach, consistent with LSNJ's other experience, is that measured increases, not rapid jumps, is the anticipated pattern, at least after the first year of a program, and that this is sound policy. In the absence of clear and compelling evidence that a program is operating inconsistently with its initial design, there should be no interference with the anticipated and enormously beneficial scope of a program that is delivering its intended benefits to beneficiaries.

If the Board is nonetheless concerned that additional cost predictability is necessary, we urge the Board to undertake a more searching process than simply imposing a rigid fixed cap that will result in eligible USF recipients being turned away. One or more trigger mechanisms, for example, that would require an adjustment of future benefit *levels* if current-year benefits exceed a certain amount would be a far better approach.

II. THE FRESH START PROGRAM PROVIDES A CRUCIAL ELEMENT OF THE USF PROGRAM AT A VERY LOW COST, AND SHOULD CONTINUE TO BE AVAILABLE FOR NEW USF ENROLLEES

Fresh Start is the sole arrearage management component of the USF program, and provides a solution to the otherwise intractable problem of existing arrears, based on past unaffordable energy bills, when a household first enrolls in USF. Where this is the case, without Fresh Start, providing affordable energy service only on a going-forward basis is a hollow promise, since the household remains subject to termination of their service on the basis of pre-program arrears despite a perfect record of post-enrollment payments of newly affordable energy costs. Everyone, we believe, recognizes that the one-time Fresh Start benefit has done its job for many current enrollees in the program (and is now a thing of the past for these customers). One consistent characteristic of poverty, however, is that it is not static. Some households leave the ranks of the poor. Others, for a wide variety of reasons, become newly impoverished, or, having faced the rigors of poverty for some time, gradually learn

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attributable to Fresh Start, which was still under consideration by the Board.

how to access anti-poverty programs. The result is that there will be a steady, though generally not large, stream of new, first-time enrollees in the USF program. There is no reason to offer these future enrollees only an ersatz version of USF assistance.

Moreover, the “cost” of the Fresh Start component of the USF program is very low, if there indeed is any “cost” at all. APPRISE reported that approximately $22 million of pre-program arrearages were eliminated in 2004-05, the first year of operation for the Fresh Start program (APPRISE Report, Executive Summary, at xxii). APPRISE also reported that Fresh Start participants had a high rate of success in making their affordable energy bills and in eliminating or substantially reducing their arrears (APPRISE Report at 109-111).

As the Board recognized in its March 4, 2004 Order creating the Fresh Start component of the USF program, Fresh Start “costs” should be expected to “drop precipitously after the first year, since [Fresh Start] is only open to customers for one year and they cannot participate again.” This, indeed, has proved to be true. PSE&G has predicted less than $12.5 million in Fresh Start credits for the 2006-07 program year, and even this amount appears to be significantly overestimated, as average monthly Fresh Start credits have averaged less than $1 million over the most recent six months for which actual figures are available.

Even more significantly, counting the total amount of Fresh Start credits as a “cost” is an easily recognizable fallacy. A substantial portion of pre-program arrears, accrued while a household faced unaffordable energy costs, are universally recognized as uncollectable from low-income customers, for whom making current payments for energy costs and other necessities is a continual struggle. In addition, collection costs of recovering any arrearage amounts that can be squeezed out of low-income household budget are generally high. In the end, only a fraction of the pre-program arrears eliminated could ever be recovered, and that at a high cost. Although it is impossible to suggest exactly what proportion of pre-program arrearages utilities could realistically recover without the completion of a net cost analysis, it is reasonable to conclude that the annual “cost” impact of Fresh Start is and will remain substantially below PSE&G’s 2006-07 estimate.

III. CRUCIAL INFORMATION IS MISSING FROM THE APPRISE REPORT, AND FROM THE RECORD IN GENERAL

The Staff proposals are insufficiently specific to permit fully informed comments that would be most useful to the Board at this time. If the Board determines that there is to be a fixed cap (which we strongly urge that it should not), a great deal depends on what amount is chosen, and what consequences will be for individual low-income customers who apply for and are eligible for USF participation, but are denied affordable energy costs because a budget cap has been reached. The future of Fresh Start is in key respects also dependent on the specifics of any budgetary changes that the Board might consider. Other information is not yet available – one of the crucial items being the completion of a net cost analysis, and another being the resolution of the pending USF rate proceedings. Thus, in addition to the timing issues discussed below, the record is simply not yet in a state that permits complete discussion or analysis of the issues.

IV. EXTENSIVE CHANGES TO THE USF PROGRAM SHOULD BE MADE ONLY AFTER CAREFUL CONSIDERATION

By setting out to fix a program that most certainly is not broken – but rather is recognized as a national model for effective low-income energy assistance – and by doing so in a needlessly hurried fashion, the Staff's proposal threatens to undermine the core commitment of the program, access to affordable energy for low-income customers.

The process is extremely rushed, particularly considering the scope and variety of the proposed changes, which would greatly harm low-income utility customers. Moreover, the current schedule requires virtually all public and stakeholder comments on the Staff's Straw Recommendations to be completed in August, when many people (including those at LSNJ most knowledgeable about energy assistance issues) are away for substantial periods on previously scheduled vacations. New Jersey has a State utility assistance program that is widely regarded as the best in the country. The time period available for consideration of the very substantial program changes set forth in the Staff's proposals should be extended well into the fall – at least until November – to allow all stakeholders to give full consideration to these issues, and to digest and analyze all of the information in the APPRISE Report. There is no crisis, program costs are about where they were reasonably expected to be, and there is no record indicating that there is a factual basis to rush program changes into effect with respect to a program that is held in such high regard and that is of such crucial importance to low-income households.

In addition, there is a major procedural problem in the absence of any plan to solicit public comments on the Staff's anticipated *final* proposals to the Board. This is a step that quite simply cannot be skipped, regardless of the other issues raised here.

The working group workshop sessions conducted on August 10 and 11, 2006, demonstrated that there continues to be great potential for the working group, which unites all of the major stakeholders, to generate ideas and to work and negotiate collaboratively toward a program that works efficiently while remaining a model to be emulated. Notably, no one in this group expressed support for the staff's major program cutback proposals – the fixed cap or the elimination of the Fresh Start component. To the contrary, many, representing both utilities and customers, expressed the opinion that these changes would pose major threats to low-income customers and to the continued success of the program. In addition, numerous participants noted the inconsistency between discussions on communication and outreach – which were productive – and the imposition of a fixed budget cap and or elimination of the Fresh Start component, which would mean that numerous eligible applicants brought to the program through successful outreach efforts would not have the prospect of energy affordability.

Ideally, we suggest that the staff's straw proposal should be withdrawn at the present time. Once the USF rate hearings have reached their conclusion, the Staff, in consultation with the USF working group, should develop a final proposal setting forth any program changes that it recommends with specificity, and stakeholders and the public should then be invited to comment. With the exception of resolving the issue of Lifeline-only USF recipients, any program changes should become effective for the 2007-08 benefit year.

At the very least, more time should be permitted for comments, and additional public comments should be solicited after the Staff's final recommendations to the Board have become available.

Very truly yours,
LEGAL SERVICES OF NEW JERSEY

David McMillin

Service List Attached